

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re)
)
Request for Declaratory Ruling) MB Docket No. 14-150
by Meredith Corporation)
)
and)
)
“Alternative PSIP Proposal” by)
PMCM TV, LLC, for KVVN(TV),)
Middletown Township, NJ)

To: Chief, Media Bureau

COMMENTS OF ION MEDIA LICENSE COMPANY, LLC

Pursuant to the Media Bureau’s Public Notice, DA 14-1298 (rel. Sept. 12, 2014), ION Media License Company, LLC (“ION”), licensee of WPXN-TV (“WPXN”), New York, New York, respectfully submits these Comments on the Alternative PSIP Proposal of PMCM TV, LLC, (“PMCM”) and the Request for a Declaratory Ruling of Meredith Corporation (“Meredith”).

ION opposes PMCM’s Alternative PSIP Proposal because its contention that PMCM has an “unqualified right to demand cable carriage on its over-the-air channel”¹ is contrary to the Commission’s rules and precedent and would upset historical viewing patterns, disrupt established business arrangements, cause viewer confusion, and otherwise disserve the

¹ *In re Application of PMCM TV, LLC*, Alternative PSIP Proposal, File No. BPCDT-20130528AJP, at 7 (Aug. 8 2014) (“Alternative PSIP Proposal”).

public interest. Furthermore, ION supports Meredith's position that ATSC A/65 requires the assignment of PSIP channel 33 to WJLP (formerly KVVV).²

I. A STATION'S PSIP "MAJOR" CHANNEL NUMBER IS THE APPROPRIATE CHANNEL NUMBER FOR CHANNEL POSITIONING RIGHTS FOLLOWING THE DIGITAL TRANSITION.

In the wake of the digital transition, a must-carry station's channel placement on a cable system is determined by reference to the station's PSIP "major" channel number, not its over-the-air RF channel.³ Because its "major" channel number is a station's channel identity for viewers, stations and viewers have an interest in having cable channel positioning correlate to a station's major channel number identity. WJLP, however, has no history of being associated with Channel 3 or any other channel in the Tri-State viewing area, given its historical operation in a Nevada community located over 2,000 miles away.

It follows that when channel positioning conflicts arise a station's major channel number guides positioning determinations. In *KSQA, L.L.C.*, a licensee filed a must-carry complaint seeking to be carried on its RF channel number (Channel 12) on Cox Cable

² *In re Application of PMCM TV, LLC*, Petition for Reconsideration and Request for Declaratory Ruling of Meredith Corporation, File No. BPCDT-20130528AJP, at 5 (May 22, 2014).

³ The Media Bureau has stated that "stations affirmatively electing mandatory carriage are entitled to be carried on their over-the-air channel number, and in digital broadcasting that channel number is identified by reference to a station's major channel number as carried in its PSIP." *Mauna Kea Broadcasting Company*, 27 FCC Rcd 13188, 13198 (Policy Div. 2012); *see also KSQA, L.L.C., v. Cox Cable Commcn's, Inc.*, 27 FCC Rcd 13185 (Policy Div. 2012).

PMCM, in a letter to the Commission dated October 7, 2014, and filed in MB Docket No. 14-150, states that "ION has no standing whatsoever" to comment on WJLP's PSIP assignment. However, as demonstrated herein, because a must-carry station's cable channel position generally is determined by reference to the station's PSIP channel, PMCM, by seeking a PSIP of 3, seeks to displace ION's WPXN, which historically has been carried on channel 3 on many Cablevision systems by mutual agreement of the parties. As a matter of law, WPXN's first-in-time channel positioning agreement has priority over any election by PMCM. ION therefore is appropriately participating in this proceeding in order to protect its channel positioning rights, maintain the benefit of its channel positioning agreement, and avoid disruption of established viewer relationships. ION is not, as PMCM alleges in its October 7 letter, "simply trying to delay the entry of a competitor into the New York market."

Communications, Inc. (“Cox”), systems.⁴ The licensee, however, had major channel number 22, and Cox already was carrying another station on Channel 12 on the systems at issue.⁵ The licensee argued, as PMCM does here, that it had a right to be carried on its over-the-air RF channel number.⁶ The Bureau disagreed, concluding that, after the digital transition, “for purposes of channel positioning, a station’s over-the-air broadcast channel number is no longer identified by reference to its over-the-air radio frequency, but instead to its Major Channel Number as carried in its PSIP.”⁷ Furthermore, the Bureau found that under Section 76.57 of the Commission’s rules, a station’s “channel positioning choice *may attach only to its Major Channel Number* as carried in its PSIP.”⁸ The licensee’s demand that it be carried on its over-the-air RF channel number accordingly was denied.⁹

PMCM’s contention that it has an “unqualified right” to carriage on cable channel 3 because WJLP (as KVNV) was broadcast “over the air”¹⁰ on RF Channel 3 in its previous community of license of Ely, Nevada, is based on a flawed and selective reading of the Commission’s digital television orders. In its First Report and Order on the Carriage of Digital Television Broadcast Signals, the Commission observed that, in the digital era, “broadcast signals will be identified and tuned to through the PSIP information process rather than by

⁴ *KSQA, L.L.C.*, 27 FCC Rcd 13185.

⁵ *Id.* at 13186.

⁶ *Id.*

⁷ *Id.* at 13187.

⁸ *Id.* (emphasis added).

⁹ *Id.*

¹⁰ Alternative PSIP Proposal, at 7.

identification” with their RF channel.¹¹ Therefore, “there is no need to implement channel positioning requirements for digital television signals of the same type currently applicable to analog signals.”¹²

The Commission’s 2008 Declaratory Order clarified that a station “carried pursuant to mandatory carriage may demand carriage on its major channel number *as broadcast in the station’s PSIP.*”¹³ Furthermore, “[i]n digital broadcasting, a broadcast station’s channel number is no longer identified by reference to its over-the-air radio frequency,” but rather is determined by reference to the station’s “major channel number.”¹⁴ The Media Bureau too has confirmed that a station’s “channel positioning rights attach to its major channel number as carried in its PSIP.”¹⁵ Thus, there can be no dispute that a station’s major channel number is the pertinent channel number for determining its cable channel position under Section 76.57. Moreover, a mutual agreement between a station and a cable operator continues to be valid channel positioning option,¹⁶ and will trump a later-in-time must-carry channel election.

PMCM’s error results from its highly selective reading of Section 76.57(a) of the rules, without considering its purpose in the context of other subsections of the same rule. Section 76.57(a) provides that a cable operator shall carry a station’s signal “on the cable system channel number on which the local commercial television station is broadcast over the air, or on

¹¹ *Carriage of Digital Television Broadcast Signals*, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, 2635 (2001).

¹² *Id.*

¹³ *Carriage of Digital Television Broadcast Signals*, Declaratory Order, 23 FCC Rcd 14254, 14259 (2008) (emphasis added).

¹⁴ *Id.*

¹⁵ *America-CV Station Group, Inc.*, 28 FCC Rcd 29, 33 (Policy Div. 2013).

¹⁶ *Id.*

the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992.” Section 76.57(c) — adopted in the Commission’s First Report and Order on digital television carriage — provides that “[w]ith respect to digital signals” of must-carry stations, “a cable operator shall carry the information necessary to identify and tune to the broadcast television signal.” Section 76.57(c) modifies Section 76.57(a) in order to achieve the underlying purpose of the rule and Section 614(b) of the Communications Act, following the transition to digital broadcasting, when television stations’ channel identification is determined by reference to their PSIP major channel numbers and often bears no relation to their RF channel numbers.

In its 2008 Declaratory Order, the Commission confirmed that “Section 76.57(c) ... should be read as clarifying the manner in which cable operators are to determine the channel number on which a local commercial or qualified NCE station is ‘broadcast over the air’ when implementing such a station’s election under Sections 76.57(a) or (b).”¹⁷ That is, when implementing a station’s election under Section 76.57(a) — the very election that PMCM says it is making — a cable operator should look to the “information necessary” to identify and tune the broadcast signal, which is a station’s PSIP channel. That is what is meant by “broadcast over the air” in Section 76.57(a) of the Commission’s rules and Section 614(b) of the Communications Act. That a station’s channel positioning election may attach only to its Major Channel Number as carried in its PSIP is the only possible correct interpretation of the rules and Commission orders.¹⁸

¹⁷ *Carriage of Digital Television Broadcast Signals*, Declaratory Order, 23 FCC Rcd at 14259.

¹⁸ *Id.*

Following the Commission’s clarification in the 2008 Declaratory Order, the Bureau properly found that for purposes of digital channel positioning, “a station’s over-the-air broadcast channel number is no longer identified by reference to its over-the-air frequency, but instead to its Major Channel Number as carried in its PSIP.”¹⁹ PMCM’s contention that its RF channel number is the appropriate — indeed, the only possible — referent for its channel positioning rights is incorrect and ignores the Commission’s explanation of the interplay between Section 76.57(c) and Section 76.57(a). Commission and Bureau decisions are clear and in accord on this point. WJLP’s channel positioning rights will be based on its to-be-determined major channel number.

II. THE RULES REQUIRE WJLP TO OPERATE ON MAJOR CHANNEL 33, WHICH WOULD AVOID VIEWER CONFUSION AND PRESERVE EXISTING COMMERCIAL ARRANGEMENTS.

Meredith is correct in stating that under the Commission’s rules, WJLP should be assigned major channel number 33. The standards set forth in ATSC A/65 anticipated the scenario here, where two licensees with overlapping DTV service areas attempt to use the same major channel number. First, ATSC A/65 provides that full power stations with “overlapping DTV Service Areas” cannot both operate with the same virtual channel number.²⁰ Second, when a conflict arises, ATSC spells out the major channel number to be assigned to the new entrant:

If, after February 17, 2009, an RF channel previously allotted for NTSC in a market is assigned to a newly-licensed DTV licensee in that market, the newly-licensed DTV licensee shall use, as its major channel number, the number of the DTV RF channel

¹⁹ *In the Matter of Gray Television Licensee, LLC*, 28 FCC Rcd 10780, 10781 n.10 (Policy Div. 2013).

²⁰ “ATSC Standard: Program Information Protocol for Terrestrial Broadcast and Cable (PSIP),” Advanced Television Systems Committee, Doc. A/65:2013, Aug. 7, 2013, at 86 (“ATSC A/65B”).

originally assigned to the previous NTSC licensee of the assigned channel.²¹

The Commission incorporated this requirement into its rules at 47 C.F.R.

§ 73.682(d). WJLP's DTV Service Area (*i.e.*, its digital noise-limited service contour) overlaps that of Meredith's station WFSB, so it should be assigned the number of the RF channel originally assigned to WFSB, which is 33. FCC precedent supports such an outcome. When PMCM was relocating a station to Delaware, the Media Bureau found that because there appeared to be overlapping DTV Service Area contours between WTTG(TV), Washington (which uses PSIP channel 5), and the PMCM channel 5 allotment in Seaford, Delaware, the new station in Delaware would be assigned PSIP channel 36.²² The reason the new station was given PSIP channel 36 was that "Channel 36 is the DTV RF channel number licensed to WTTG(TV)."²³ For the same reason, WJLP should be assigned PSIP channel 33 here. In the alternative, the Bureau at least should not assign WJLP a PSIP channel of 3, in order to effectuate the clear purpose of the standard to avoid confusing PSIP overlaps.

Such an assignment would also preserve existing business arrangements and avoid confusion for viewers of WPXN, which has long been carried on Channel 3 on Cablevision systems in the New York DMA. Section 614(b)(6) of the Act and Section 76.57(d) of the rules provide that a must-carry station may be carried on any channel number "as is

²¹ *Id.*

²² *Seaford, Delaware*, 25 FCC Rcd 4466, 4472 (Video Div. 2010). *See also Associated Christian Television Systems, Inc.*, 25 FCC Rcd 9237, 9237 (Video Div. 2010) (finding that, pursuant to Section 73.682(d), WACX(TV) could not operate on the same virtual channel as WWSB(TV) because the two stations' contours overlapped (WACX is licensed to a community in the Orlando-Daytona Beach-Melbourne, FL, designated market area, and WWSB is licensed to a community in the Tampa-St. Petersburg (Sarasota), FL, designated market area)); Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, to counsel for Entravision Holdings, LLC regarding KETF-CD (Feb. 17, 2012) (authorizing KETF-CD to switch from using major channel 25 to 31 because of overlapping protected service contours with a Mexican station also using major channel 25).

²³ *Seaford, Delaware*, 25 FCC Rcd at 4472 n.41.

mutually agreed upon by the station and the cable operator.”²⁴ PMCM’s demand that WJLP be carried on cable channel 3 is contrary to Commission precedent establishing that a must-carry station with a channel positioning agreement — such as, in this case, ION’s WPXN — has priority over a later-in-time must-carry station’s election for carriage on the same channel.

Media Bureau decisions establish that “mutual agreements between cable operators and commercial or noncommercial television stations” entered into pursuant to subsection (d) of the rule have as much weight as the other channel positioning options.²⁵ ION is a party to such an agreement with Cablevision. Pursuant to this agreement, Cablevision carries WPXN on Channel 3 on Cablevision’s New York systems. Well-established precedent further holds that a first-in-time channel positioning arrangement has priority over a channel positioning election subsequently made by another must-carry station. Thus, ION’s first-in-time channel positioning agreement with Cablevision has priority over any subsequent channel positioning elections made by WJLP or other must-carry stations.

For example, in *KX Acquisition*, the FCC denied a complaint by KXLI-TV that it had elected and was entitled to carriage on cable channel 13. The cable operator, however, had a pre-existing agreement with another must-carry station, KTCI, providing for carriage of KTCI on cable channel 13. The FCC found that “a broadcast station which first asserts a valid claim to a channel position has a legal priority over all stations subsequently requesting that same channel position.”²⁶ In finding that the earlier agreement had priority, the FCC noted that maintaining

²⁴ 47 C.F.R. § 76.57(d).

²⁵ *KX Acquisition, L.P.*, 10 FCC Rcd 944, ¶ 15 (CSB 1995).

²⁶ *Id.* at ¶ 16.

the existing channel order was not only legally correct but also in the public interest “because it reduces the possibility of any subscriber confusion.”²⁷

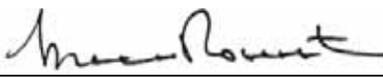
WPXN’s historical carriage on cable channel 3 on the Cablevision systems has created an expectation in viewers that they will find WPXN’s programming on channel 3. A change in channel position would be disruptive for viewers and for the entire Cablevision channel lineup, and cause unnecessary costs related to cable lineup changes for Cablevision and WPXN.

CONCLUSION

Accordingly, for the reasons stated herein, ION respectfully requests the Commission deny PMCM’s Alternative PSIP Proposal and grant Meredith’s Request for a Declaratory Ruling that PMCM may not commence program tests on PSIP channel 3 and must be assigned PSIP channel 33.

Respectfully submitted,

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October 14, 2014

²⁷ *Id.* at ¶ 19. See also *KVMD Licensee Co., LLC*, 19 FCC Rcd 17395, 17395-97 (Policy Div. 2004) (finding that an agreement with a first-in-time must-carry station took priority over a later-in-time station electing carriage on its over-the-air channel position).

CERTIFICATE OF SERVICE

I, Stephen Kiehl, certify that on this 14th day of October, 2014, I served copies of the foregoing Comments of ION Media License Company, LLC, by causing them to be delivered by hand, by email, or by first class, postage prepaid U.S. mail, as indicated, to the following:

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